

**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

IT/239/Rev.2

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**PRACTICE DIRECTION ON THE APPLICATION OF
AN ELECTRONIC COURT MANAGEMENT SYSTEM**

(IT/239/Rev.2)

I. General Provisions

Article 1 Introduction

In accordance with Rule 19(B) of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia (“Rules” and “Tribunal”, respectively), I issue this revised Practice Direction in order to provide a framework for a reliable and secure electronic system to support the efficient management of court proceedings.

Article 2 Definitions

In this Practice Direction, unless the context otherwise requires, terms shall have the meanings set out in Rule 2 of the Rules, and the following terms shall mean:

Chamber(s):	The Chamber or Chambers of the Tribunal referred to in Article 11 of the Statute;
Court Officer:	The Registry officers performing the Court Officer functions;
Court Usher:	The Registry officers performing the Court Usher functions;
eCourt SOP:	The Tribunal Standard Operating Procedure for Managing eCourt Documents, of 10 October 2016, and as subsequently amended;
eCourt system:	The Electronic Court Management System;
ITSS:	The Information Technology Support Services Section of the Tribunal;
Metadata:	The identifying or descriptive information for each potential exhibit or witness, including, <i>e.g.</i> , document numbers, status and date;
OTP	The Office of the Prosecutor of the Tribunal pursuant to Article 16 of the Statute;
Parties	OTP and the Defence Team(s);
Practice Direction:	Practice Direction on the Application of an Electronic Court Management System;
Private Document List:	A secure repository in the eCourt system where a party may store electronic files or documents not accessible to the other parties or the Chamber;

Publish:	The electronic projection of exhibits on to monitors in the courtroom; “publishing” an exhibit by projecting it on screens in the courtroom has no impact on the confidentiality of the exhibit; confidential exhibits must be published in a way that protects their confidentiality;
Registrar:	The Registrar of the Tribunal pursuant to Article 17(3) of the Statute;
Registry:	The Registry of the Tribunal pursuant to Article 17 of the Statute;
Release:	To move a previously private file or document from the Private Document List into a folder of less-restrictive access, thereby making it accessible to other trial participants with access to the system;
Released Document List:	A repository in the eCourt system, accessible to all trial participants with access to the system, for files or documents that need not be kept private from other parties or the Chamber.

In the Practice Direction, the masculine shall include the feminine and the singular the plural, and vice-versa.

Article 3 General Principles Governing the eCourt System

1. The eCourt system is predicated on the following fundamental principles:
 - a. consistent with current practice, documents, decisions and orders shall, whenever reasonably possible, be submitted in electronic version for filing by the Registry;
 - b. in proceedings before the Tribunal, documentary evidence shall be, whenever legally appropriate and reasonably possible, submitted, registered, stored and presented in electronic form; unless a Chamber rules otherwise, the electronic version of a document shall be authoritative;
 - c. in proceedings before the Tribunal, the electronic version of transcripts of prior testimony shall be authoritative; and
 - d. the Registry shall be responsible for the overall implementation of the eCourt system, and shall take into account the specific requirements of the judicial activity of the Tribunal, including the need to ensure authenticity, accuracy, confidentiality and preservation of judicial records and material.
2. This Practice Direction defines the standards and requirements for preparing and exchanging information between the parties and the Chamber. The Practice Direction is designed to ensure that whenever reasonably possible all of the necessary data is available in electronic form during the trial and in a proper format as set out in the eCourt Policy.

The provisions of this Practice Direction shall be read and applied in a trial or appeal subject to any order or direction of the Chamber.

3. This Practice Direction specifies measures to facilitate the electronic exchange between the parties and the Chamber with respect to any evidence and court filings in this matter. Any user of the eCourt system desiring to work with paper copies may print such materials for his use, in or out of court. No users of the eCourt system shall be required to print, provide, or use hard copies of documents otherwise available in the eCourt system, except as provided in paragraph 22 of this Practice Direction.

II. Document Submission

Article 4

Pre-Trial Document Submission

4. Before the commencement of their respective cases, the parties shall be required to submit the documents and material, including images, they intend to offer for admission into evidence in the case to the Registry in an electronic format as set forth in the eCourt SOP. Exceptions to this requirement include exceptional circumstances where an electronic version is either inappropriate or unhelpful in the trial process (*e.g.* physical evidence other than documents or photos, or maps that are too large to effectively view electronically).
5. The Registry shall respect and protect the confidentiality of non-public documents so submitted, so no other participant to the case – OTP, Defence, Judges, or Chambers staff – will have access to them unless and until such access is permitted by the Rules or by order of the Chamber.
6. If for technical reasons the received material cannot be imported into the eCourt system, it shall be returned to the party for resubmission.
7. Once imported into the eCourt system, a party's exhibits shall be stored in that party's Private Document List and will not be accessible to the other party or the Chamber until such time as it is released by that party.

Article 5

Publication of Documents During Trial

8. Before presenting an exhibit for admission into evidence, a party shall release that document to the Registry on the eCourt system.
9. When a party deems it appropriate, or when ordered by the Chamber, the party will also release any or all potential exhibits into the Released Document List for the benefit of the other party or the Chamber.
10. Once a document is received into evidence as an exhibit utilising the eCourt system, the presentation of the official exhibit will be done in the eCourt system.

11. The parties may release their documents into their respective Released Document Lists at any time after the documents are imported into the eCourt system, but not later than ordered by the Chamber. If a multi-paged exhibit is released immediately prior to its use during the cross-examination of a witness, the cross-examining party must provide the other party, the Chamber and the Registry with a courtesy paper copy of the exhibit, or allow time for the printing of that exhibit, if that party requests it, and before using the exhibit in court.

Article 6
Printing Copies of Documents

12. Except where specifically directed in this Practice Direction, all persons who wish to have or use paper copies of exhibits or transcripts are responsible for printing and assembling those exhibits or transcripts. This includes but is not limited to the parties, Chambers staff, Registry staff, court reporters, interpreters, and audio-visual technicians.

III. Tendering and Numbering Exhibits in Court

Article 7
Assignment of Exhibit Numbers

13. Prior to trial, each party shall label each page of each potential exhibit with a unique number, legible and visible on the face of the page, and conforming in format to that prescribed in the eCourt SOP. For documents from OTP or Defence that already bear an OTP Bates number, that number shall be sufficient for purposes of this paragraph. When the document is tendered in court, the party tendering that potential exhibit must read into the record an identifying number (*e.g.* the Rule 65 *ter* number or Document ID Number) under which the document is uploaded into the eCourt system.
14. Upon tendering the potential exhibit in court, pursuant to a court order, the Court Officer will assign an MFI (“Marked for Identification”) or an EXH (“Exhibit”) number to the document, and the participants in the trial shall refer to the document thereafter by this newly assigned number. If and when the MFI document is later admitted into evidence, the prefix of this number will change from MFI to EXH. If the court decides not to admit the MFI document, the prefix will change to MNA (“Marked Not Admitted”). In either case, the number that follows remains the same.

Article 8
Handling and Integrity of Exhibits

15. The Registry, acting on the instructions of the Chamber, shall be responsible for completing the exhibit information, referring to its use in trial, and in the eCourt system.
16. Only the Registry will have the ability to enter or alter information on the eCourt system for a record after it has been marked as MFI or admitted into evidence by the court (EXH).
17. All potential exhibits tendered in court utilising the eCourt system shall be marked electronically by the Registry with the identifying number referred to paragraph 14, so

that number will be visible on screen when the potential exhibit is published in the eCourt system.

18. The eCourt system shall safeguard the confidentiality of each exhibit – other than those that the Chamber has admitted and classified as public – and the users of the eCourt system shall exercise care in their use of the system to guard against unauthorised access to and disclosure of confidential information.

Article 9 **Exceptional Cases of Submission of Exhibits**

19. Where a party tenders a potential exhibit which has not been previously submitted to the Registry, it must be submitted in electronic format 24 hours (comprising one full working day) in advance, formatted and validated as set forth in the eCourt SOP, to ensure that it can be imported into the eCourt system in time to be used in trial.
20. Unless a document is required to be served under Rule 65 *ter*, it shall be placed on the Private Document List of the party seeking to use it, with access restricted to that party.
21. If a new potential exhibit in its electronic form is provided to the Registry for importing into the eCourt system, the uploading process is to be completed within one working day in order for the document to be used in trial in electronic format.
22. If, under exceptional circumstances, a potential exhibit is submitted in hard-copy for reasons other than those specified at paragraph 4, then the submitting party is responsible for scanning the document, completing the required metadata, and submitting it to the Registry, formatted and validated as set forth in the eCourt SOP, as soon as possible, but no later than two working days thereafter. Where a party tenders a document in court in hard-copy format, it is the party's responsibility to ensure that an adequate number of hard copies are provided to the Registry for use and distribution in court, and that the electronic and hard-copy versions of the document are the same.
23. The formatting regime specified in the eCourt SOP applies to the potential exhibits submitted under this Article.

IV. Witness Use of Exhibits in Court

Article 10 **Presenting Documents to Witnesses**

24. A party may present evidence in court by requesting that the Court Officer publish a document in eCourt, preferably in the witness's language, where available. Alternatively, a party may present evidence, or by providing the witness a paper copy, preferably in the witness's language, where available.

Article 11
Marking of Exhibits by Witnesses in Court

25. With the aid of the electronic display board (smart board), a witness shall be permitted electronically to mark a document or make annotations to it as indicted by the parties or the Chamber.
26. The marked image, shall, if ordered by the Chamber, become a new exhibit in the case and the captured image shall be uploaded into the eCourt system by the Court Officer.
27. The marked image shall be assigned a new exhibit number by the Court Officer.
28. After importing the marked or annotated document and entering the exhibit information, the Court Officer shall immediately release it into the “In Court Released Documents” folder for the parties and the Chamber to access.

V. Publication of Exhibits in Court

Article 12
Tasks of Court Officers and Ushers

29. The Court Officer is responsible for the official exhibits admitted into evidence during the trial.
30. The Court Officer shall be responsible for the publication of official exhibits in the courtroom when requested to do so by the parties or the Chamber. This means that the Court Officer is responsible for checking the metadata, in particular the classification or status of the exhibit, before publishing it onto the screens in the courtroom.
31. Upon the request of the parties or Chamber, the Court Officer may publish the first requested page of the exhibit and relevant translation. Thereafter, the Court Usher may take over publishing any subsequent pages of the exhibit, if so requested by the parties or Chamber.
32. The Court Officer may temporarily delegate the task of publishing exhibits to the Court Usher, but shall supervise the Court Usher’s publishing.
33. The Court Ushers may assist the parties and a witness in referring to parts of an exhibit and translation as well as assist a witness in using the electronic display board to mark or annotate documents.
34. If a witness experiences difficulty in reading an exhibit displayed on the eCourt system, the Court Officer may print a paper copy of the exhibit and provide it to the witness if so instructed by the Chamber.
35. In addition to the eCourt SOP, the Registrar may issue instructions, consistent with this Practice Direction, for the guidance of Registry staff.

VI. Accused's Access to Documents

Article 13

Documents to be Provided in the Language of the Accused

36. Evidence tendered in court will be published in one of the working languages of the Tribunal as stipulated in Article 33 of the Statute, and may be displayed in a language that the accused understands.

VII. Transcripts

Article 14

Format of Transcripts in eTrans

37. The eCourt system provides parties and the Chambers with the ability to make private annotations electronically to the transcript of proceedings by using the eTrans function. A party or Chamber shall only have access in the eCourt system to its own annotations, *i.e.* not to the annotations of any other party or Chamber.
38. Transcripts shall identify which portions of the transcript are of a confidential nature.

VIII. Miscellaneous Provisions

Article 15

Miscellaneous

39. While the sender of electronic data should make every effort to provide virus-free data, it is the obligation of the recipient of the electronic data to test for viruses.
40. It is the responsibility of each party to bear the cost of producing materials in electronic format for use in the eCourt system as outlined in this Practice Direction, subject to any orders issued in the proceedings. To the extent that these costs outweigh savings over the previous hard-copy regime, the parties may apply to the Registry to consider allocating additional resources for this purpose.

Article 16

An Order Supersedes this Practice Direction

41. If the interests of justice so demand, any order by the Chamber or a member thereof will always supersede the Articles of this Practice Direction.



Judge Carmel Agius
President